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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,365	03/09/2004	Roger Dean Neitzell	066042-9276-04	2254
60840	7590	02/15/2007	EXAMINER	
MICHAEL, BEST & FREIDRICH LLP 100 EAST WISCONSIN AVENUE SUITE 3300 MILWAUKEE, WI 53202			PAYER, HWEI SIU CHOU	
		ART UNIT		PAPER NUMBER
				3724
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	02/15/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/796,365	NEITZELL ET AL.
	Examiner	Art Unit
	Hwei-Siu C. Payer	3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 09 June 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-26 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. §.119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

Detailed Action

Upon further consideration, the finality of the rejection of the last Office action has been withdrawn.

Claims Rejection - 35 U.S.C. 103 (a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8, 10, 12-19, 21, 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel (U.S. Patent No. Des. 377,303) in view of Alsruhe (U.S. Patent No. 6,102,134).

Nagel shows a power tool that can be adjusted into three different positions, a first position in which the tool body and the hand grip are generally aligned (see Fig.8), a second position in which the tool body and the hand grip are at an obtuse angle (see Fig.7), and a third position in which the tool body and the hand grip are generally perpendicular to each other (see Fig.2) substantially as claimed except Nagel does not show a motor, a drive mechanism, a switch assembly, a wire arrangement, a locking mechanism, an actuator, and a biasing means.

Alsruehe teaches providing a power tool with a motor (18) and a drive mechanism (20) for driving a tool bit; a switch assembly or trigger (28) for connecting the motor (18) to a power source (26); a wiring arrangement (see Figs.4 and 5, unnumbered) for connecting the switch assembly (28) to the motor (18); a locking mechanism having recesses (46,48) and a projection (90) engageable in a selective one of the recesses (46,48) for locking the hand grip (14) of the power tool in a plurality of different positions; an actuator (70) for moving the locking mechanism between a locked condition and an unlocked condition; and means (80) for biasing the locking mechanism toward a locked condition.

Therefore, it would have been obvious to one skilled in the art to modify Nagel by providing the power tool with a motor, a drive mechanism, a switch assembly, a wire arrangement, a locking mechanism, an actuator, and a biasing means to achieve a workable power tool as taught by Alsruehe.

3. Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel (U.S. Patent No. Des. 377,303) and Alsruehe (U.S. Patent No. 6,102,134) as applied to claims 1 and 12 above, and further in view of Yang (U.S. Patent No. 4,976,173).

Nagel's power tool as modified above shows all the claimed structure except it lacks a cord for electrically connecting the motor to an external power source.

However, it is well known in the art to use a power cord for supplying an external energy source to a power tool as evidenced by Yang (see column 3, lines 40-42).

Therefore, it would have been obvious to one skilled in the art at the time this invention was made to further modify Nagel by providing the power tool with a cord for connecting the motor to an external power source to power the tool as is well known in the art.

4. Claims 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (U.S. Patent No. 6,021,573) in view of Nagel (U.S. Patent No. Des. 377,303).

Kikuchi et al. show a reciprocating saw comprising a housing (14) having a body and a hand grip integrally formed with the body; the body housing a motor (44) and a drive mechanism (16); a reciprocating spindle (21) for supporting a tool element (46); the drive mechanism (16) being operably connected to the spindle (21) for causing reciprocation of the spindle (21) substantially as claimed except the body and the hand grip are of one single piece (14) and therefore not adjustable with respect to each other.

Nagel teaches that it is desirable to provide a power tool that is adjustable into three different positions, a first position in which the tool body and the hand grip are generally aligned (see Fig.8), a second position in which the tool body and the hand grip are at an obtuse angle (see Fig.7), and a third position in which the tool housing and the hand grip are generally perpendicular to each other (see Fig.2).

Therefore, it would have been obvious to one skilled in the art to modify Kikuchi et al. by having the one piece housing formed of two separated pieces, namely a body and a hand grip, and adjustably connecting the two pieces together so that they are

angularly adjustable in a plurality of different positions to facilitate the use of the power tool in a confined working area as taught by Nagel.

5. Claims 1-8, 10, 12-19, 21 and 23-26 are rejected under 35 U.S.C. 103(a) as obvious over Alsrue (U.S. Patent No. 6,102,134) in view of Nagel (U.S. Patent No. Des. 377,303).

Alsrue discloses a power tool (10) comprising a body (12); a motor (18); a drive mechanism (20); a hand grip (14); a switch assembly or trigger (28); a wiring arrangement (see Figs.4 and 5, unnumbered); a locking mechanism having recesses (46,48) and a projection (90) engageable in a selective one of the recesses (46,48); an actuator (70); means (80) for biasing the locking mechanism toward a locked condition; and wherein Alsrue further suggests more recesses (46,48) can be added to lock the body (12) and the hand grip (14) in additional positions with respect to each other (see column 3, lines 62-65) in addition to the shown two positions (i.e. aligned and obtuse angle, see Figs. 4 and 6).

However, Alsrue does not explicitly mention the additional positions include a generally perpendicular position.

Nagel teaches that it is desirable to provide a power tool that is adjustable into three different positions wherein one of the positions is the position in which the tool housing and the hand grip are generally perpendicular to each other (see Fig.2).

It would have been obvious to one skilled in the art to modify Alsrue by having the hand grip adjusted to a position that is generally perpendicular to the tool body

to facilitate the use of the power tool in a confined working area as taught by Nagel.

6. Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alsruhe (U.S. Patent No. 6,102,134) in view of Nagel (U.S. Patent No. Des. 377,303) as applied to claims 1 and 12) above, and further in view of Yang (U.S. Patent No. 4,976,173).

Alsruhe's power tool as modified above shows all the claimed structure except the tool is powered by a battery rather than by an external energy source.

However, it is well known in the art to use a power cord for supplying an alternative energy source to a power tool as evidenced by Yang (see column 3, lines 40-42).

Therefore, it would have been obvious to one skilled in the art at the time this invention was made to further modify Alsruhe by powering the tool by an external energy source through a power cord as is well known in the art.

Remarks

Applicant's argument that if Alsruhe were modified to include additional detents positioned along the rear portion 40 between the first and second detents 46,48, the second housing member 14 of such a modified power tool 10 would not be able to pivot toward a substantially perpendicular position. In response, it has been held that the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art. In re Bozek, 163 USPQ 545 (CCPA 1969).

In response to Applicant's argument with respect to the Yang reference, Yang is merely used as a teaching reference to show it is well known in the art to use a power cord for supplying an alternative energy source to a power tool. Therefore, it would have been obvious to one skilled in the art at the time this invention was made to power Alsruhe's tool by an alternative energy source by means of a power cord as is well known in the art and taught by Yang.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-

4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for official communications and 571-273-4511 for proposed amendments.

H Payer
February 8, 2007

✓ H. Payer

H. Payer
Primary Examiner